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SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1945

No. 366

HAROLD H. EMMONS,
Petitioner (Appellant Below)

vs.

MAX SMITT, JOHN C. SPAULDING, EDWARD H. YOST, EMIL W. COLOMBO, ARTHUR A. KOCINSKI, THEODORE LEVIN, and STATE BAR OF MICHIGAN
Respondents (Appellees Below)

PETITION FOR CERTIORARI

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HAROLD H. EMMONS,
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MAX SMITT, JOHN C. SPAULDING, EDWARD H. YOST, EMIL W. COLOMBO, ARTHUR A. KOCINSKI, THEODORE LEVIN, and STATE BAR OF MICHIGAN
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PETITION FOR WRIT OF CERTIORARI TO THE U. S. CIRCUIT COURT OF APPEALS (Sixth Circuit)

To the Honorable Supreme Court of the United States:

Petition of Harold H. Emmons, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit to review the decision of said court rendered the 25th day of June, 1945.

The opinion sought to be reviewed is Harold H. Emmons, plaintiff and appellant, vs. Max Smitt, John C. Spaulding, Edward H. Yost, Emil W. Colombo, Arthur A. Kocinski, Theodore Levin, and State Bar of Michigan, Defendants and Appellees (R. 86).

This court has jurisdiction to review said decision under 240 (a) of the Judicial Code (28 U.S.C. S347).

Opinion of the Circuit Court of Appeals was filed June 25, 1945 (R. 86). Petition for re-hearing was denied July 23, 1945, without opinion (R. 103). Issuance of mandate was stayed by order of that court dated the 13th day of August, 1945, for thirty days pending the application for writ of certiorari in this court.

The statute involved is the Federal Civil Rights Statute, U.S.C.A. Title 28, Sec. 41 (14). The provisions of the United States Constitution involved are the 5th and 14th Amendments.

SUMMARY STATEMENT OF THE MATTER INVOLVED

In October, 1940, charges were filed against Appellant Emmons by a grievance committee of the State Bar of Michigan, claiming that he had been guilty of conduct unbecoming an attorney in his connection with the estate of George H. Cummings. They were based upon the claim that Emmons had by various devices converted monies of the estate to his own use. Emmons had practiced in both State and Federal Courts for over forty years without challenge to his professional conduct, and he maintained that his whole connection with the estate was highly ethical and beneficial to it, and that he had neither appropriated its assets or used them in any unprofessional, unethical or illegal manner.

Cummings died testate June 7, 1920, ostensibly leaving a considerable estate. In reality it was bankrupt (R. 5-6). Its assets consisted of cash $104.20, personalty approximately $5,000, and small equities in some eighty-four pieces of real property. Under Michigan law the estate

could only sell such interests as then existed. It could neither improve or subdivide the property. Over a million dollars were allowed by the court against the estate in claims. Faced with this situation and to realize something for the estate, Judge Durfee authorized Emmons to personally, and on his own account, become the actual purchaser of certain of these equities (R. 7). In each instance the court fixed the value of the estate's interest in excess of its real value and entered orders authorizing their sale (R. 7-8), and, on the coming in of the reports of sale, entered orders confirming them, all according to the statutes, decisions and the probate court practice of Michigan.

Emmons became the ultimate purchaser, paying in the amounts fixed by the court, subdivided three of the properties on his sole responsibility and individual account, sold them as lots, and executed hundreds of warranty deeds therefor guaranteeing title, and, in addition, obligated himself personally to install improvements amounting to approximately a million dollars (R. 11-13).

While engaged in this enterprise, which extended over upwards of ten years, his right to acquire title individually and subdivide in the manner described was challenged by purchasers of lots who claimed that he could not personally buy or acquire these equities or take title thereto because of his being a trustee or executor of the estate. For this purpose they began three suits against Emmons and his co-trustee and executrix in the Oakland Circuit Court in Chancery, the competent court of record in Michigan (R. 9-14). The first of them was tried in open court in September, 1924. After full hearing a decree was entered by the court finding:

(a) That the sales to Emmons were legal and binding upon the estate.

(b) That the absolute and complete title to the premises described was vested thereby in Emmons and all deeds executed by Emmons for lots in such subdivisions conveyed clear title.

(c) That neither the estate of Cummings nor its representatives had any interest or title therein.

Later, in November and December, 1924, like decrees were entered in the two remaining cases (R. 9-11, 14).

The State Bar of Michigan, through its grievance committee, now takes the position that the above orders of the Probate Court and decrees of the Circuit Court all final, binding and unappealed from, did not concern and were not binding on them, that the conveyances of title to Emmons under them were mere "wash" or "conduit" sales, and that notwithstanding Emmons having carried on these enterprises on his own account over a long period and involved himself personally in large financial obligations and warranties of title, the enterprises and their avails are construed by them as those of the estate and not those of Emmons personally (R. 19).

To settle this controversy, Emmons then filed a bill of complaint in the Circuit Court for Ingham County under the provisions of the Michigan Declaratory Judgment Act, naming the State Bar as party defendant, and praying for a judicial determination of the scope and effect of the orders and decrees herein mentioned as well as his rights thereunder. No answer was filed to his bill. Instead, defendant applied to the Supreme Court of Michigan for a

writ of prohibition against the Honorable Leland W. Carr, Circuit Judge of Ingham County, which, on December 29, 1943, through a divided (three for granting, two concurring in the result, and three dissenting), opinion was granted prohibiting Judge Carr from further proceeding in said case (R. 2-4, 20-24). It is the claim of Emmons that, as a citizen of the United States and Michigan, he was entitled to file such a bill for a declaratory judgment, the same as any other citizen, and that to deprive him of this right was contrary to the provisions of the Fourteenth and Fifth Amendments of the Federal Constitution and of the Civil Rights Act. The basis of the issuance of the writ of prohibition was that because appellant was a lawyer he could not as a citizen maintain such declaratory proceedings.

Emmons then filed a complaint (R. 1-27) in the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, claiming that the action of the Supreme Court of the state in denying him the right to proceed in the same manner as any other citizen could under the provisions of the Declaratory Judgment Act, presented a Federal question because it was in contravention of the due process and equal protection provision of the Fourteenth Amendment and also the Fifth Amendment of the Federal Constitution and clearly raised a federal question within the provisions of the Federal Civil Rights Statute—U.S.C.A. Title 28, Sec. 41 (14). The Bar and its committee did not answer Emmons' bill in the District Court and moved to dismiss before answer. The District Court determined that no federal question was presented by Emmons and granted the motion. The Circuit Court of Appeals affirmed the decision of the District Court.

QUESTIONS PRESENTED

1. Has petitioner been denied the due process and equal protection of the laws guaranteed to all citizens by the 14th Amendment of the Federal Constitution, by the denial to him of a right common to all citizens, namely, a hearing in open court upon proceedings for a declaratory decree.

2. Does the complaint filed in the Federal Court state a cause of action within the purview and intent of the Federal Civil Rights Statute—U.S.C.A. Title 28, Sec. 41 (14).

3. Can petitioner be thus denied the right guaranteed him by the 5th as well as the 14th Amendment to have declared and confirmed his rights in and to the real property purchased and paid for by him, and thereafter platted and conveyed to hundreds of persons by deeds containing covenants of warranty of title.

4. Where complaint is grounded upon the Civil Rights Statute, U.S.C.A. Title 28, Sec. 41 (14) is it necessary to specifically allege that $3,000 or more is involved in order that a federal court shall have jurisdiction.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

1. The United States Circuit Court of Appeals, Sixth Circuit, has decided an important question of Federal law, in conflict with the 5th and 14th Amendments of the Constitution of the United States and in conflict with the decisions of this court.

2. It appears from the record that a person who is a citizen of the United States has been discriminated against and denied his civil rights of a hearing in open court.

3. It clearly appears from the record that the Circuit Court of Appeals of the Sixth Circuit has misconstrued Federal Statutes.

4. It clearly appears from the record that unless the writ prayed for is granted, petitioner will have no redress for the infringement of his constitutional and civil rights.

5. This case presents an important issue in the domain of civil rights. In re Summers, decided June 11, 1945, Vol. 89 L. Ed. Adv. Op., P. 1305.

WHEREFORE, YOUR PETITIONER PRAYS that a writ of certiorari be issued out of and under the seal of this court, directed to the Circuit Court of Appeals for the Sixth Circuit, commanding that court to certify and send to this Court for review and determination, as provided by the Statute of the United States, a full and complete transcript of the record and proceedings in Case No. 9925, and entitled on its docket "Harold H. Emmons, Plaintiff and Appellant, vs. Max Smitt, John C. Spaulding, Edward H. Yost, Emil W. Colombo, Arthur A. Kocinski, Theodore Levin, and State Bar of Michigan, Defendants and Apellees," and that the judgment therein of said Circuit Court of Appeals be reversed by this Court, and that your Petitioner may have such other and further relief in the premises as to the court may seem just and proper.

Respectfully submitted,

Harold H. Emmons,
Petitioner.

Floyd C. Williams,
John J. Sloan,
Hugh Francis,
A. W. Sempliner,
L. Rothenberg,
Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Opinion of the District Court appears 58 Fed. Supp. 869. The Opinion of the Circuit Court of Appeals (Sixth Circuit), has not yet been reported but will be found R. 86 et. seq. No Opinion was filed upon denial of petition for rehearing.

JURISDICTION

The date of the decree to be reviewed is June 25, 1945 (rehearing denied 23rd day of July, 1945). Jurisdiction of this court is invoked because Appellant has been denied that due process and equal protection of the law which the 14th and 5th Amendments guarantee him and all other citizens and also denied a hearing on civil rights as provided by U.S.C.A. Title 28, Sec. 41 (14).

The cases sustaining the jurisdiction are as follows:

The cases sustaining jurisdiction are as follows:

Clyde Wilson Summers, Petitioner, U. S. Supreme Court Advance Opinions, Volume 89, No. 17, Page 1304, decided June 11, 1945.

Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923;

Douglas v. Jeannette, 319 U. S. 157; 87 L. Ed. 1324;

Hague v. Committee for Industrial Organization, 307 U. S. 495; 83 L. Ed. 1423;

Fleenor v. Hammond, 116 Fed. 2nd, 982;

Truax v. Corrigan, 257 U. S. 312; 66 L. Ed. 254.

This action is therefore brought under the above authority to secure for plaintiff his civil rights of a hearing in Court and of equal protection of the laws.

The constitutional and statutory provisions which sustain jurisdiction are:

(A) The 14th Amendment to the Constitution of the United States, Section 1 whereof provides:

> "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also the 5th Amendment, which provides—

> "No person shall * * * be deprived of life, liberty or *property* without due process of law; * * *"

(B) The jurisdiction of the District Court to hear this case is directly established by the Civil Rights Act, United States Code Ann., Title 28, Sec. 41 (14):

"Suits to redress deprivation of civil rights. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, 'regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.' (R. S. §563, par. 12, §629, par. 16; Mar. 3, 1911, c. 231, §24, par. 14, 36 Stat. 1092.)"

(C) The exception contained within Subdivision 1 of Sec. 41 of Title 28, U.S.C.A., where after reference is made to the jurisdictional amount of $3,000, it is specifically stated:

"The foregoing provisions as to the sum and value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section." • • • Subdivision 14, Suits to Redress Deprivation of Civil Rights above quoted is one of the succeeding paragraphs.

(D) Section 240 (A) of the Judicial Code (28 U.S.C. S.347).

STATEMENT OF THE CASE

The case has already been stated in the preceding petition under the heading "Summary Statement of Matter Involved" (ante, pp. 2-5), which is hereby adopted and made part of this brief, without repeating the same.

This case therefore squarely presents to the court the constitutional question whether a person who has been granted the additional status of an attorney, who is a member of this as well as all other Federal and Michigan State Courts, and who has practiced his profession for upwards of forty-six years without the slightest breath of criticism, and who took a bankrupt estate, paid the court the price for certain assets unuseable in that court, developed and sold the same at his own cost, expense and liability, and was thereby enabled to render the estate solvent, pay all of its debts and cost of administration in full, and to turn assets and money into a crippled children's fund in the amount of $400,000.00, all of which acts were approved and conferred by final, binding and unappealed orders of the Probate Court and decrees of the Circuit Court, is now, as a citizen of the United States and of Michigan, to be denied a hearing in a court of competent jurisdiction as to his rights and liabilities not only to the estate but to the hundreds of persons to whom he sold lots and gave deeds with covenants of warranty, exactly as any citizen has the right to do.

SPECIFICATION OF ERRORS

The lower court erred in holding that the issuance of a writ by the State Supreme Court prohibiting appellant from further proceedings in the State Court upon a bill of complaint filed for a declaration of rights seeking a determination of the legal scope and effect of certain orders and decrees, is not in violation of appellant's rights as a citizen under the 14th and 5th Amendments and does not present a federal question over which the District Court has jurisdiction.

The lower court erred in holding the complaint did not state a federal question where the cause of action stated a case within the intent and purview of the Federal Civil Rights Statute, U.S.C.A. Title 28, Sec. 41 (14).

The lower court erred in holding that where a complaint is grounded upon the Federal Civil Rights Statute, U.S.C.A. Title 28, Sec. 41 (14) it is necessary to specifically allege that $3,000 or more is involved in order to give the court jurisdiction.

The lower court erred in holding in reference to Title 28, U.S.C.A. Sec. 41, Subdivision 14, that plaintiff's claim thereunder is based on his right to practice law as a claimed property right, whereas the court should have held that whether or not the right to practice law is a property right is not a question in the case and that plaintiff as a citizen has stated a case which comes within the exception found in Subdivision 14 of Sec. 41, U.S.C.A., and within the 14th Amendment to the Federal Constitution, because he had been denied his civil rights of a hearing in open court.

ARGUMENT

The lower court in arriving at its determination that the complaint did not state a federal question authorizing the District Court to take cognizance of appellant's action erred in both its findings of fact and conclusion of law. Some errors of fact appear in the aforesaid Specifications of Error.

Additional Errors of Findings of Fact are as follows:

On Page One, the lower court found that "the Michigan Court entered a decree validating the title of any conveyance executed by plaintiff," whereas the court should have found that "the Michigan court entered a decree determining title to be in the plaintiff free and clear of any claim on the part of the Cummings Estate or any other person."

The lower court held that under the State Constitution, the Supreme Court of the State had general superintending control with the power to issue writs over all inferior courts and therefore plaintiff was not denied due process of law and equal protection of the law, whereas the Court should have found that the Supreme Court of the State has the power to issue writs of prohibition but this power is not an issue in the case, the issue being the violence done the 14th and 5th Amendments of the Federal Constitution and the Civil Rights Statute by the issuance of said writ.

The Court found the complaint "fails to show that plaintiff was denied any reasonable opportunity to make his defense before the Supreme Court," whereas the Court

should have found that "the plaintiff has not had an opportunity to make his defense before the Supreme Court, or any other court, because the Supreme Court of the State denied him that right when it prohibited him from exercising his rights as a citizen of having the benefits of the State Court Declaratory Judgment proceedings."

The Court in sustaining the motion to dismiss held in substance that "plaintiff had not been denied due process," whereas the Court should have found that "the question of whether or not the plaintiff has had due process is a matter to be decided on the merits and on consideration of the motion to dismiss it is sufficient if the complaint sufficiently alleges that there has been a denial of due process."

Having in mind the aforesaid errors of fact, we now respectfully call the Court's attention to erroneous conclusions of law.

The lower court erroneously held that the decision of this court in *Hurwitz v. North,* 271 U. S., 40-42; 70 L. Ed. 818, is applicable to the case at bar. The *Hurwitz* case involved the right of a physician to retain his license to practice medicine and did not in any way affect the physician's right as a citizen. Moreover, full hearing was had in the courts of Missouri as to the right to practice medicine and during said full hearing the rights, duties and liabilities of a citizen were not involved. That obviously is not the case at bar.

The lower court erred by overlooking the Federal statutory exception to the necessity of including in the complaint an allegation that $3,000 is involved, which exception is specifically stated in Subdivision 14, Section 41, Title 28

of U.S.C.A. Under the last mentioned statute and said exception, the $3,000 allegation is not necessary where civil rights are involved, and this Court has so held in *Douglas v. Jeannette,* 319 U. S. 157; 87 L. Ed. 1324, and in other cases. In the last mentioned *Douglas* case, this court, citing *Hague v. The Committee of Industrial Organization,* 307 U. S., 495; 83 L. Ed. 1423, 1432-1436, 1443-1446, 59 S. Ct. 954, held that:

> "The district courts of the United States are given jurisdiction by 29 U.S.C.A., Sec. 41 (14), 7 F.C.A. Title 28, Sec. 41 (14) over suits brought under the Civil Rights Act without the allegation or proof of any jurisdictional amount."

(See also *Ghadiali v. Delaware State Medical Society,* 48 F. Supp. 789.)

The lower court's citation of the said *Douglas* case is 130 Fed. (2), 652, wherein the Circuit Court of Appeals held:

> "It follows that if the complaint sufficiently alleges deprivation of these rights without due process of law the jurisdiction of the district court must be sustained, since jurisdiction to hear a suitor's complaint depends upon what he states his complaint to be and not upon whether at the hearing he is able to establish its merit. For were we to hold that jurisdiction exists only if the proven facts justify the conclusion that there has been a deprivation of liberty without due process of law it would necessarily follow that in every such case the court would have to hear and decide the merits of the controversy before deciding whether it had power to hear and decide the merits. This would be a manifest absurdity."

Applying the aforesaid statement in the *Douglas* case to the case at bar it is at once apparent that the lower court erred in its determination that appellant had had due process and equal protection of the laws, because the court should have limited itself to the determination of whether or not the complaint on its face stated a case over which the Court had jurisdiction.

In the *Douglas* case, Jehovah's Witnesses had in Pennsylvania been prosecuted and convicted under an ordinance of the city of Jeannette forbidding them to solicit without procuring a license. They filed a bill of complaint in the U. S. District Court for Western Pennsylvania to restrain these criminal prosecutions. The District Court accepted jurisdiction and after a hearing held the ordinance invalid, (39 F. Supp. 32); the Court of Appeals for the Third Circuit sustained the jurisdiction of the District Court, but reversed on the merits—130 F. 2, 652; this court upheld the jurisdiction of the District Court, using the following language—page 162:

> "The particular provision of the Constitution on which Petitioners rely is the Due Process Clause of the Fourteenth Amendment, violation of which the dissenting judge below thought was not sufficiently alleged to establish a basis for relief under the Civil Rights Act. But we think this overlooks the special relationship of the Fourteenth Amendment to the rights of freedom of speech, press, and religion guaranteed by the First. We have repeatedly held that the Fourteenth Amendment has made applicable to the states the guaranties of the First. *Schneider v. Irvington*, 308 U. S. 147, 160, note 8, 84 L. Ed. 155, 164, 60 S. Ct. 146, and cases cited: *Jamieson v. Texas*, 318 U. S. 413, ante, 869, 63 S. Ct. 669. Allegations of fact sufficient to show depriva-

> tion of the right of free speech under the First Amendment are sufficient to establish deprivation of a constitutional right guaranteed by the Fourteenth *and to state a cause of action under the Civil Rights Act, whenever it appears that the abridgment of the right is effected under color of a state statute or ordinance.* It follows that the bill, which amply alleges the facts relied on to show the abridgment by criminal proceedings under the ordinance, sets out a case or controversy which is within the adjudicatory power of the district court." (Emphasis supplied).

The lower court, in consideration of the facts in the case at bar, erred in its conclusion of law by disregarding the application of the Civil Rights Act referred to as aforesaid by this Court in the *Douglas* case.

The lower court erred in holding (R. 90) that—

> "The complaint that the issuance of the writ of prohibition was erroneous falls far short of a challenge that due process was lacking in the proceedings which led up to it. See *American Ry. Express Co. v. Commonwealth of Kentucky,* 273 U.S. 269; *Arrowsmith v. Harmoning,* 118 U.S. 194, 195; *Iowa Central Ry. Co. v. Iowa,* 160 U.S. 389, 393; *Tracy v. Ginzberg,* 205 U.S., 170, 177; *Bonner v. Gorman,* 213 U.S. 86; *Central Land Co. v. Laidley,* 159 U.S. 112; *McDonald v. Oregon R. R. & Nav. Co.,* 233 U.S. 665, 669."

Examination of each of the last mentioned seven cases relied upon by the lower court, discloses that in every case answers were filed and a hearing had in open court. In not any of said cases was there the arbitrary and capricious exercise of power by the State Court complained of in the case at bar. The issuance of a writ of prohibition

denied the appellant a hearing in open court. It is admitted that the only hearing ever had in the State Court was the argument in the Michigan Supreme Court upon petition of the State Bar for a writ of prohibition. The writ of prohibition was directed to the Circuit Judge. (*State Bar of Michigan v. Ingham Circuit Judge,* 307 Mich. 393.)

We have no quarrel with the principle of law stated in the *McDonald* case, supra, as follows:

> "It is elementary and needs no citation of authorities to show that the due process clause of the Fourteenth Amendment does not control methods of State Procedure or give jurisdiction to this Court to review mere errors of law alleged to have been committed by a State Court in the performance of its duties within the scope of its authority concerning matters non-Federal in character."

The case at bar is not an attempt to review mere errors of law in the State Court, and certainly it cannot be said that the denial of appellant's civil rights is non-Federal in character.

In the *American Railway* case, supra, this court held that "the action of the court followed a fair hearing."

In the *Iowa Central Railway* case, supra, cited by the lower court and quoted in appellees' brief, the Court held:

> "But it is clear that the Fourteenth Amendment in no way undertakes to control the power of the State to determine by what process legal rights may be exercised or legal obligations be enforced, *provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided.*" (Emphasis supplied).

It must be conceded that the issue of the legal scope and effect of the said final orders and decrees were not and could not be heard, considered or determined in the State prohibition proceedings.

Instead of being authority for the lower court's holding, this case and others relied on by the lower court supports appellant's contention that he was denied a fair opportunity to be heard upon the issues set forth in his declaratory proceedings.

The defendants are without jurisdiction to consider and determine the legal scope and effect of the state court's final orders and decrees.

A question may arise in the Court's mind as to why appellant could not have a fair opportunity to be heard before the State Bar Committee upon the legal issues involved in the Bill of Complaint filed in the State Court. The answer is that the State Bar Committee is entirely devoid of jurisdiction to pass upon the legal scope and effect of these orders and decrees. Furthermore, even if this Committee had jurisdiction, it is apparent from the Record that they have already interpreted such decrees contrary to the express wording therein contained, have openly stated that the sales conducted pursuant thereto were "wash sales" and that they intended to disregard such orders and decrees. Counsel for all defendants in his argument before the Circuit Court of Appeals adopted this as the deliberate position of all the defendants by stating to the court that the sales pursuant to said decrees were mere "conduit" sales.

Additional authority sustaining the jurisdiction of the District Court is found in re:

Clyde Wilson Summers, Petitioner, Volume 89, No. 17, Page 1304, U. S. Supreme Court Advance Opinions, decided June 11, 1945;

Fleenor v. Hammond, 116 Fed. (2), 982;

Truax v. Corrigan, 257 U. S. 312, 334, 66 L. Ed. 254;

Smith v. O'Grady, 312 U. S. 328, 85 L. Ed. 859;

Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923.

The Summers case, supra, was a case involving civil rights and this court granted certiorari on a showing that the Supreme Court of Illinois had denied petitioner's request to practice law in that state. Mr. Justice Reed in the majority opinion held:

> "Petitioner challenges here the right of the Supreme Court to exclude him from the bar under the due process clause of the Fourteenth Amendment to the Constitution of the United States which secured to him protection against state action in violation of the principles of the First Amendment. *Because of the importance of the tendered issue in the domain of civil rights, we granted certiorari.*—U. S.—, ante, 31, 65 S. Ct. 52." (Emphasis supplied.)

In the *Fleenor case,* Fleenor, after serving part of his sentence was granted a pardon by the Governor of Kentucky, conditioned upon the right of the Governor to revoke the same. A subsequent Governor, by an ex parte order and *without any hearing,* revoked the pardon and directed that Fleenor be rearrested and returned to the reformatory, to serve the remainder of his sentence. Fleenor insti-

tuted habeas corpus proceedings in the Oldham County Court of Kentucky, but before the petition could be heard the Attorney General sought and obtained from the Court of Appeals a writ prohibiting the County Court from proceeding with the matter. Fleenor then filed his application for a writ of habeas corpus in the U. S. District Court upon the ground that the revocation of his pardon *without a hearing*, constituted a denial to him of due process of law, as guaranteed by the 14th Amendment. The Court of Appeals held such revocation to be violative of the 14th Amendment, using the following language:

> "It is our conclusion that the petitioner's right to his freedom under the terms of the pardon could not be revoked without such hearing as is the generally accepted prerequisite of due process, if the exercise of such power by the Governor is challenged by unequivocal allegations that the petitioner had complied with the conditions of the grant."

Thus, under different clauses covered by the 14th Amendment, Federal Courts have held that the denial by a state court of a constitutional right such as the right to a hearing or the equal protection of the law, infringes the guaranties of the 14th Amendment.

In the *Truax* case above cited, an employer operating a restaurant filed his suit against his striking employees and others to enjoin them from picketing his place of business and by libelous utterances and unlawful methods persuading his patrons to leave him. In Arizona equity had general jurisdiction of such a case, but a statute passed in 1913 forbade the issuance of a restraining order solely in a controversy between employers and employees of a labor dis-

pute. Thus this statute took away from employers the rights which were available to all citizens. The Supreme Court of Arizona held against the employer, but the Supreme Court of the United States reversed and remanded the case. The case was based upon the 14th Amendment and the opinion enunciates the law, p. 333, as follows:

> "Mr. Justice Matthews, in *Yick Wo v. Hopkins*, 118 U. S. 356, 369, 30 L. Ed. 220, 226, 6 Sup. Ct. Rep. 1064, speaking for the court of both the due process and equality clause of the 14th Amendment, said:
>
> > 'These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color or of nationality; *and the equal protection of the laws is a pledge of the protection of equal laws.*'
>
> "(334). The accuracy and comprehensive felicity of this description of the effect of the equality clause are shown by the frequency with which it has been quoted in the decisions of this court."

and on p. 334:

> "The 14th Amendment as this court said in *Barbier v. Connolly*, already cited, intended 'not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but *that equal protection and security should be given to all under like circumstances, in the enjoyment of their personal and civil rights;* that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; *that they should have like access to the courts of*

> *the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts;* that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one (335) than are laid upon others in the same calling and condition, and that, in the administration of criminal justice, no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses." (Emphasis supplied.)

In *Smith v. O'Grady* (1941), 312 U. S. 329; 85 L. Ed. 859, Smith was convicted and sentenced upon his plea of "guilty", induced as he claimed by fraud of the prosecuting officers in misleading him as to the character of the offense and the possible term of imprisonment thereunder; subsequently he made application to the Nebraska state courts for a hearing under a writ of *habeas corpus,* alleging these facts; *without giving petitioner an opportunity to prove his allegation,* his application was dismissed; motion for reconsideration was dismissed, all of which was affirmed by the Supreme Court of Nebraska, without opinion. This court, speaking through Mr. Justice Black, reversed this action of the Nebraska courts, using the following language:

> "* * * If these things happened, petitioner is imprisoned under a judgment invalid because obtained in violation of procedural guaranties protected against state invasion through the Fourteenth Amendment. The state court erroneously decided that the petition stated no cause of action. If petitioner can prove his allegations the judgment upon which his imprisonment rests was rendered in violation of due process and cannot stand."

A Michigan case in point, which we regret to state was not called to the attention of the lower court is *Templar v. State Board of Examiners of Barbers,* 131 Mich. 254. This case is important for two reasons:

First, it distinguishes between the right to practice a profession such as medicine or law and the rights of citizenship. Quoting the language of the court on page 257:

> "But the practice of medicine is no more an incident of citizenship than the practice of the trade of a barber. All persons are entitled to enjoy the equal protection of the law, and while it may be competent for the legislature, in the exercise of its police powers, to provide for an examination and licensing of barbers, * * * would it be contended that the legislature might provide that only white persons should be licensed?"

This is analagous to the case at bar for the lower court in substance held that because petitioner was a lawyer he was excluded from the rights of the State Declaratory Judgment procedure.

Second, in the *Templar* case the State Statute prohibited aliens from becoming barbers. The defendant Board of Examiners refused to receive plaintiff's application to become a barber on the ground that he was an alien. The court said again on page 255:

> "The question presented is whether the provision of the act which requires an applicant to be a citizen of the United States is valid. The relator contends that this provision is invalid, for the reason that it violates the provisions of the Fourteenth Amendment of the Constitution of the United States, which

declares that no State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

"In *Barbier v. Connolly*, 113 U. S. 27, 31 (5 Sup. Ct. 357), Mr. Justice Field said:

> "The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, *but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property.*".. (Emphasis supplied).

"In Re *Grice*, 79 Fed. 645, it was said:

> "By 'equal protection of the laws' is meant equal security under them to every one, under similar terms, in his life, his liberty, his property, and in the pursuit of happiness. *It not only implies the right of each to resort, on the same terms with others, to the courts of the country for the security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts, but also his exemption from any greater burdens and charges than such as are equally imposed upon all others under like circumstances.*" (Emphasis supplied).

The State Court's denial to petitioner of a court hearing in the Declaratory Judgment proceedings was in direct contravention of the established constitutional law as stated in the *Templar* case, because he was denied the right to resort to the courts of the country on the same terms with others, and was thereby denied his guaranteed civil and constitutional rights.

PETITIONER HAS PROPERTY RIGHTS INVOLVED

The record discloses that appellant has executed hundreds of warranty deeds pursuant to said orders and decrees, wherein he guarantees good title, and also that he obligated himself for the making of improvements in the subdivided properties (R. 8, 11, 12, 14). That these involve property rights of appellant is beyond dispute.

SUMMARY

We do not dispute the right of the State by legislation to determine the venue of civil actions nor do we contend that the 14th and 5th Amendments are intended to deprive the State of its power to establish and regulate jurisdictional proceedings in the field of court procedure, including reasonable classifications. The case at bar is not one where the State law determines that the issues involved shall be tried in one forum instead of another. In this case and on this record the State Bar Committee is devoid of jurisdiction to hear and determine the questions upon which appellant was denied a hearing. Appellant's professional conduct

or the regulation of the same are not issues in the case at bar nor are they issues in the proceedings for the declaratory judgment either in the State or Federal Court. What we do contend is that appellant's fundamental rights which the 14th and 5th Amendments safeguard have been violated, namely, the right upon filing suit in the State Court to have equal rights in like cases and under like circumstances with all other persons. Every person, whether a lawyer or not, whether black or white, no matter what his station in life, must under the 14th and 5th Amendments be afforded a fair opportunity to be heard upon the issues of his court proceedings. We respectfully submit that the lower court was in error in its legal conclusions that appellant was afforded a fair opportunity to be heard upon the issues of his bill of complaint in the State Court. On the contrary, he was denied this right and relegated to a State

Bar Committee without jurisdiction to give him the relief prayed for.

We respectfully submit that for the reasons given and under the authorities cited, the petition for certiorari should be granted.

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SEP 10 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 366

HAROLD H. EMMONS,
Petitioner,

v.

MAX SMITT, JOHN C. SPAULDING, EDWARD H. YOST, EMIL W. COLOMBO, ARTHUR A. KOSCINSKI, THEODORE LEVIN and STATE BAR OF MICHIGAN
Respondents

RESPONDENTS' BRIEF OPPOSING CERTIORARI

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Respondents

RESPONDENTS' BRIEF OPPOSING CERTIORARI

FOREWORD

The record in the Court of Appeals consisted of the printed portion filed in this court by petitioner with his petition for certiorari and also an unprinted portion consisting of (a) an affidavit identifying the rules of the Supreme Court of Michigan as to state bar grievance proceedings, (b) complaint, pleadings, briefs, etc., in the grievance proceedings, (c) pleadings, record, briefs, etc., in the Michigan Supreme Court prohibition proceedings, (d) typewritten transcript of the district court proceedings, and, (e) certain probate and circuit court orders.

Our request that the unprinted record also be filed in this court has been complied with. Citations to the unprinted portion will be prefixed by "U.R."

CONTENTIONS

Respondents oppose the petition herein on the grounds that:

1. No federal question of substance, or otherwise, is involved.

2. Petitioner did not (as to any alleged federal question) seek review, by this court, of the judgment of the Michigan Supreme Court which prohibited (a) petitioner's suit in the Ingham County court seeking declaratory judgment against the State Bar of Michigan as to the probate court orders and circuit court decrees quieting title, and (b) circuit court injunctive interference with the pendings state bar grievance proceedings. The district court had no appellate jurisdiction.

3. The interpretation and construction of the Michigan declaratory judgment statute and of the rules of the Michigan Supreme Court prescribing investigatory and disciplinary procedure as to professional misconduct of members of the bar of that court are solely state court functions.

4. Petitioner's real purpose in seeking declaratory relief as to probate court orders and decrees quieting title was to interfere with the state bar grievance proceedings which involved charges of professional misconduct committed years after such orders and decrees and which charges were in no way affected thereby.

FACTS

Background

Petitioner, under a will drawn by him for a client, was one of the executors, and one of the trustees of a residuary trust fund for the benefit of crippled children (U.R. 15-19).

Under an arrangement claimed to have been made by petitioner with a former probate judge (deceased), petitioner, in 1920, made probate sales of testator's realty to persons who were to and did convey the property to petitioner; petitioner having assured the judge that any profit made would be turned over to the trust (U.R. 65-66, 72, 97-98, 176-184, 264-279, 296-299). Later in 1924 decrees quieting title to the property thus acquired were entered in the circuit court.

In 1928, he filed his final account as executor, listing net estate assets of about a million dollars, consisting of land contracts receivable, cash, etc., held by him as sole surviving executor. This account was allowed by a successor probate judge and the residue was assigned to petitioner as trustee; he being ordered to furnish $120,000 trustee bond (U.R. 21 and U.R. Trans. 124). This was years after the probate sale orders and decrees quieting title.

State Bar Rules

Petitioner is a member of the State Bar of Michigan which was "integrated" by rules of the Michigan Supreme Court adopted November 21, 1935 and supplemented

March 16, 1936. These rules appear on pages 2-6 of the printed petition in the prohibition proceedings (U.R. 118-122 and 273 Mich. xxv-vlv, 304 Mich. lx1-lx111). Briefly, the rules provide for informal investigation, by designated prievance committees, of charges of unprofessional conduct of members of the state bar, ultimate filing of formal written complaint with the committee in case of probable misconduct, notice, appearance, answer, hearing by the committee of sworn testimony procurable by subpoena, filing of report and record in circuit court (if discipline other than private reprimand is recommended), opportunity to file exceptions, hearing before and determination by three circuit judges, and right of review by Supreme Court on the law, and on the facts in its discretion. Until the hearing before the three judges, the proceedings are not made public.

Grievance Proceedings

In September 1940 a formal complaint (U.R. 1-59) was filed with the respondent grievance committee. This complaint charged petitioner with professional misconduct in connection with the probate proceedings, i.e:

> 1. Having (a) failed to give the $120,000 trustee bond as ordered; (b) concealed such failure; (c) acted as trustee thereafter for years—filing court petitions as trustee and obtaining orders re the administration of the trust. (U.R. 21). (Section 15870 C. L. Mich., 1929, §27.3049 Stat. Ann. provides that neglect to furnish such bond in 30 days shall be considered as a declination of the trust).

2. Having, in April 1935, after a new successor probate judge had taken office, obtained (upon a petition which misrepresented the reason for failure to give the required bond) an order reducing to $300 the required trustee bond and thereafter making further misrepresentations in his final trustee account U.R. 22-45).

3. Having, during the period June 1928 to April 1935, paid himself $216,950.14 of the trust funds in wrongful self-dealings as to stock in a research corporation owned by him or his children (U.R. 3-5) and having concealed such transactions in his subsequent probate accounts filed in 1935-1936 (U.R. 12).

4. Having filed false sworn answer, in 1936, to accounting bill of complaint filed against him in the circuit court.

None of these charges turns on the effect of the probate sale orders in 1920 or the decrees quieting title to the realty in 1924, nor was the state bar or its committee a party in interest as to any suit brought by petitioner to quiet title to lands involved in the probate sales, nor a party to such proceedings.

As shown by the unprinted record, petitioner, in the grievance proceedings, pleaded catagorically to the charges (after appearance in person and by attorney); about 1000 pages of testimony were taken in the proceedings in 1942; briefs were filed by petitioner and then petitioner petitioned the state bar to reopen the proofs. This was done and additional testimony was taken (U.R. 90-114, 141-152).

State Court Declaratory Proceedings

On the eve of the filing of the report of the grievance committee, petitioner, in May, 1943, instituted in a circuit court of another county, proceedings against the state bar as sole defendant for injunction against continuance of the grievance proceedings and for declaratory judgment as to the effect of the probate sale orders and decrees quieting title (U.R. 170-197), Ex parte restraining order was entered by that court (U.R. 160).

Supreme Court Prohibition Proceedings

The State Bar filed original proceedings in the Supreme Court of Michigan to prohibit the circuit court declaratory proceedings on the grounds that, under the circumstances, the circuit court lacked jursidiction as to the grievance proceedings and the Michigan declaratory judgment statute was inapplicable (U.R. 115-197). The Supreme Court (State Bar of Michigan v. Ingham County Circuit Judge 307 Mich. 393) upheld the state bar's contentions and prohibited prescution of the circuit court proceedings, relegating petitioner to the grievance proceedings for his defense as to charges of unethical professional conduct. (U.R. 280-292). Petitioner was not only a defendant in the prohibition proceeding (U.R. 115-197) but appeared, filed briefs, and personally argued his contentions in the Supreme Court (U.R. 248-279). His subsequent petitions for rehearing and reconsideration were denied (U.R. 293-307, 343-346, 350, 352). He took no steps to appeal from the judgment of that court.

District Court Declaratory Proceedings

Thereupon petitioner instituted declaratory proceedings against respondents in the district court at Detroit (R. 1-27) which proceedings were dismissed, on respondents' motion, for want of jurisdiction (R. 30, 67). The district judge examined the record of the various proceedings, ante, which were introduced as exhibits and which were unquestioned (R. 51-52). No diversity of citizenship existed between the parties.

Circuit Court of Appeals Proceedings

From the judgment of dismissal entered in the district court petitioner appealed to the Circuit Court of Appeals, Sixth Circuit, which, after briefs and argument, affirmed the judgment of dismissal (R. 85) and later denied rehearing (R. 103).

ARGUMENT

Lack of Federal Question

Appellate Jurisdiction

As properly found by both the district court and the circuit court of appeals, no federal question was presented by petitioner's complaint filed in the district court.

Petitioner's right to practice law in Michigan does not stem from the federal constitution or from any federal statute.

Bradwell v. Illinois, 16 Wall. 130, 21L.ed. 442:

> "* * * the right to control and regulate the granting of license to practice law in the courts of a state is one of those powers which are not transferred to the Federal Government * * *."

Accord: *In re Lockwood*, 154 U.S. 116, 19S.Ct. 1082, 38L.ed. 929.

In re Summers, 89 Adv. Op. 1304, 1310.

This court has no jurisdiction to review an order of a state court disbarring a member of its bar.

Selling v. Radford, 243 U.S. 46, 37S.Ct. 373, 61L.ed. 585.

No claim is made that petitioner has not had, or will not have, due process of law in the disciplinary proceedings in which he has participated and has been fully heard. No report therein has yet been filed.

The District Court had no power to review the judgment of the Michigan Supreme Court.

Rooker v. Fidelity Truct Co. 263 U.S. 413, 44 S. Ct. 149, 68L.ed. 362.

Non Federal Questions

Petitioner sought declaratory relief under a state statute. The state bar contended that the statute was inapplicable and that the circuit court had no jurisdirtion to interefere with the pending disciplinary proceedings instituted under the Supreme Court rules. That called for determination of non federal questions and the judgment of the Supreme Court of Michigan thereon is res judicata.

Erie R. Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188.

Huddleston v. Dwyer, 322 U. S. 232, 64 S. Ct. 1015, 88 L. Ed. 1246.

Smith v. O'Grady, 312 U. S. 329, 61 S. Ct. 572, 85 L. Ed. 859.

McCain v. Des Moines, 174 U. S. 167, 19 S. Ct. 633, 43 L. Ed. 936.

Petitioner's Purpose

Petitioner's purpose is to interfere with the prosecution of the disciplinary proceedings. This appears by the inclusion, in his bill of complaint in the crcuit court and in his complaint in the district court, of prayers for injunction restraining prosecution of the disciplinary pro-

ceedings and by the fact that neither of respondents have any interest that would justify making them the sole defendants in a declaratory proceeding as to the effect of the probate sale orders and decrees quieting title.

CONCLUSION

It is urged that the petition be denied.

Respectfully submitted,

GEORGE E. BRAND
Attorney for Respondents.

September 7, 1945

CHARLES ELMORE CROPLEY

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1945

No. 366

HAROLD H. EMMONS,
Petitioner (Appellant Below)

vs.

MAX SMITT, JOHN C. SPAULDING, EDWARD H. YOST, EMIL W. COLOMBO, ARTHUR A. KOCINSKI, THEODORE LEVIN, and STATE BAR OF MICHIGAN
Respondents (Appellees Below)

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SUPREME COURT
OF THE
UNITED STATES

October Term, 1945

No. 366

Harold H. Emmons,
Petitioner (Appellant Below)

vs.

Max Smitt, John C. Spaulding, Edward H. Yost, Emil W. Colombo, Arthur A. Kocinski, Theodore Levin, and State Bar of Michigan
Respondents (Appellees Below)

PETITIONER'S REPLY BRIEF

Respondents' Brief Does Not Answer Petitioner's Claims

Respondents' brief filed herein does not answer nor challenge the substance or correctness of any of the questions presented in the petition for certiorari and the brief in support thereof, viz.:

1. That the legal scope and effect of the final orders and decrees upon which declaratory judgment is sought in the lower court were not and could not have been heard or determined in the State prohibition proceedings.

2. That the respondents are without jurisdiction to dispute or determine the legal scope and effect of the State orders and decrees.

3. That the complaint alleges that a dispute exists between petitioner and respondent as to the interpretation to be given to certain courts' final orders and decrees and this dispute has been substantiated in the arguments in the lower court in the briefs filed by respondents.

4. The erroneous conclusions of fact of the lower court designated in our brief stand unchallenged.

5. The erroneous conclusions of law of the lower court designated in our brief stand unchallenged.

6. The questions presented and the reasons relied upon for the allowance of the writ as stated in the petition (pages 6 and 7), stand unchallenged.

Respondents' Brief Is Based Almost Wholly on Certain of the Contents of the Unprinted Portions of the Record, Which are Spurious, Untrue and Inadmissible at the Present State of the Case

Respondents' brief is comprised almost entirely of comments and arguments upon the so-called grievance proceedings brought by the State Bar of Michigan before one of its Grievance Committees, membership of which comprises the other six defendants herein, and to a statement of charges pending before the Grievance Committee of the State Bar of Michigan which directly and by innuendo

charge petitioner with unethical conduct as an attorney. Such statements completely ignore the pertinent facts and refutation which petitioner at the present stage of the proceedings has no opportunity to present, but which will be fully answered at the hearing on the merits. None of these matters are properly before the court at the present stage of the case, but are thrust in by respondents' counsel for the obvious purpose of prejudicing the court with this extraneous, indirect and spurious material. This method does not accord with ethical standards applicable to any client or attorney, and particularly so when the client is a State Bar Association attacking one of its own members.

Respondents' Brief Chiefly Argues Questions Which are Not Involved In This Case

Respondents answer our petition and brief by stating points which are not questions in the case and then citing authorities in support thereof. *Bradwell v. Illinois,* and other cases on page 8 of respondents' brief are in accordance with our position as stated on pages 26 and 27 of our original brief herein. We have no quarrel with the legal effect of *Erie Railroad Company v. Tompkins* and other cases cited by respondent on page 9 which require the Federal courts to follow the decisions of the State court except in certain instances. It is to be noted that the *Erie Railroad Company* case held that one of the excepted instances is in matters governed by the Federal Constitution as in the case at bar. Not a single case cited by respondent refutes the authorities cited in our brief pertaining to the questions presented in the petition and the reasons relied on for the granting of the writ.

Petitioner's Case Is Based Entirely on the Bill of Complaint, and the Material Contained in the Unprinted Portion of the Record Is Inadmissible under the Authorities

The case before this court is based entirely on petitioner's bill of complaint found in the printed record (pp. 1-27). This bill of complaint does not maintain nor contend, nor purport to be, an appeal from the decision of the Michigan Supreme Court prohibiting the Michigan Circuit Court from hearing petitioner's bill for declaratory judgment filed therein, nor does it attempt to prohibit future activities of the defendant State Bar or its committee in the grievance proceedings, nor does it assert that petitioner's right to practice law is a property right, that being unnecessary to the present case.

The lower court properly held "it must be kept in mind that the motion to dismiss must be determined by the facts set out in the complaint" (R. 89). In order for the lower court to arrive at this conclusion, it avoided reference to matters not contained in the complaint and now relied upon by respondent, for the reason that all such material was introduced by respondents over the objection of counsel for petitioner (R. 31, 72). In the lower court petitioner argued that upon a motion to dismiss under Rule 12 (b), (6), i. e., for failure to state a cause of action, the allegation of the complaint must be taken as true, and further, that such motion will not be granted unless it clearly appears from the complaint itself that no cause of action can be proved or established on hearing. Citing:

Cool v. International Shoe Co., 142 Fed. (2) 318, 320 (8th Circuit, May 3, 1944);

Cohen v. United States, 129 Fed. (2) 733, 736 (8th Circuit, August 3, 1942);

Douglass v. Jeannette (1943), 319 U. S. 157, 87 L. Ed. 1324, 130 Fed. (2) 652;

Ledbetter v. Farmers Bank and Trust Co., 142 Fed. (2) 147 (4th Circuit, April 11, 1944);

Tahir Erk v. Glenn L. Martin Co., 116 Fed. (2) 865 (4th Circuit, Jan. 6, 1941).

The lower court after considering the foregoing authorities made no reference to the spurious matter referred to on pages 4 and 5 of respondents' brief as representing the contents of the complaint filed with the respondent State Bar Grievance Committee. The obvious purpose of attempting to inject this material into the record is to contradict the allegations of the complaint, to establish the claims which appellee would urge in a hearing on the merits, and to divert the court's attention from the questions presented in the petition for certiorari.

The Decision of the Michigan Supreme Court Prohibiting the State Courts from Hearing Petitioner's Bill for Declaratory Decree, Opens the Door of the Federal Court for a Declaratory Proceeding Therein

The decision of the Michigan Supreme Court prohibiting the Circuit Judge from hearing the case is accepted as final in Michigan, but petitioner does assert in his bill and before this court that such action of the Michigan Supreme Court, denying him as a citizen the right to a hearing on his declaratory bill, opens the door to his present bill filed in the Federal Court asking a declaratory decree. This eliminates the question whether such denial by the Michigan Supreme Court was based upon a Federal or a non-Federal question. The provisions of the Constitution and of the Federal Statutes and the cases interpreting the same are cited in petitioner's brief herein as establishing the Federal jurisdiction under the circumstances set up in petitioner's bill of complaint.

These contentions have not been answered by respondents' brief.

Respondents In the Grievance Proceedings Now Attempt to Repudiate Court Orders and Decrees Entered Twenty Years Ago by the Wayne County Probate Court and the Oakland County Circuit Court

Referring to the statement of the grievance proceedings in respondents' brief (pp. 4 and 5), an examination of the bill of complaint herein discloses that the grievance proceedings are based upon the assertion that the proceeds received by petitioner in his individual operation of subdividing and marketing certain real estate, at his own risk and expense, belonged to the estate from which he had purchased the property and for which he had paid the estate in full. The orders of the Wayne Probate Court and the decrees of the Oakland County Circuit Court, passed upon and, as the plaintiff asserts, finally determined this question some twenty years before the defendants now raise it in these proceedings, and such determination was adverse to the present claim of the defendants. They now assert that these orders and decrees are not binding upon them, and therefore upon anyone else, because they were, as the defendants say, "wash" sales or "conduit" sales. This contention is directly contrary to the scope, purpose and language of these orders and decrees.

This, however, is not the question presented by the petition for certiorari. It only goes to prove that a decree in a declaratory judgment proceedings may be beneficial to the respondents as well as petitioner and purchasers of lots, and that a dispute does exist as to the interpretation of these orders and decrees.

The Petition for Certiorari Is Presented to Protect and Secure the Civil Rights Guaranteed to Petitioner By the Fifth and Fourteenth Amendments to the Constitution and by the Civil Rights Act

Petitioner's purpose in presenting the petition for certiorari is to protect his civil rights and to obtain that due process and equal protection of the laws guaranteed to all citizens by the Federal Constitution.

Petitioner, as a citizen, who has incurred in his personal capacity large obligations under warranty deeds and agreements to improve the property, is asking the court to construe and determine finally the scope and effect of these orders and decrees, and has asked in Subdivision 2 of his prayer (R. 25), that the defendants be restrained *pendente lite* pending the determination of the instant cause. If, after this cause shall be determined, and decree entered, the defendants desire to proceed further with their grievance proceedings, it will be possible for them to do so. However, if the orders and decrees are by decree herein construed to mean exactly what they say, then defendant's grievance proceedings will vanish and the present attempt of the defendants to ignore such orders and decrees will be properly defeated. In sum, such a decree will furnish the absolute guidance not only for petitioner and the persons to whom he executed deeds of the property, but also to the defendants-respondents herein. This is the purpose of a declaratory proceeding.

There is no claim that the Federal court has jurisdiction over State disciplinary proceedings of attorneys. The granting of the injunction as prayed for is only incidental to the relief sought in the declaratory judgment proceedings.

CONCLUSION

Petitioner therefore submits that his petition for certiorari should be granted and he be allowed the hearing in his declaratory proceeding which is guaranteed to every "person" including every citizen of the United States and of Michigan by the Fifth and Fourteenth Amendments of the Constitution and by the Civil Rights Statute, all of which are set forth verbatim in the petition and brief heretofore filed by petitioner herein.

Respectfully submitted,

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